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BEFORE THE ARIZONA CORPORATION COMMISSION

2003 AUG 29 P 4: 11

MARC SPITZER

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

Arizona Corporation Commission DOCKETED

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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING

ELECTRIC RESTRUCTURING

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING ADMINISTRATOR

IN THE MATTER OF TUCSON **ELECTRIC COMPANY'S** APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES COMPLIANCE DATES

ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES COMPLIANCE DATES

DOCKET NO. E-00000A-02-0051

DOCKET NO. E-01345A-01-0822

DOCKET NO. E-00000A-01-0630

DOCKET NO. E-01933A-02-0069

ARIZONANS FOR ELECTRIC CHOICE & COMPETITION'S NOTICE OF FILING REBUTTAL TESTIMONY OF KEVIN C. HIGGINS AND MICHAEL K. McELRATH

Arizonans for Electric Choice & Competition hereby provides notice of the filing of the rebuttal testimony of its witnesses, Kevin C. Higgins and Michael K. McElrath, in the above captioned dockets.

RESPECTFULLY SUBMITTED this 29th day of August, 2003.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

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IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING ELECTRIC

IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR VARIANCE OF CERTAIN REQUIREMENTS OF A.A.C. 4-14-2-1606

IN THE MATTER OF THE GENERIC PROCEEDINGS CONCERNING THE ARIZONA INDEPENDENT SCHEDULING

IN THE MATTER OF TUCSON ELECTRIC COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC POWER COMPETITION RULES

ISSUES IN THE MATTER OF TUCSON ELECTRIC POWER COMPANY'S APPLICATION FOR A VARIANCE OF CERTAIN ELECTRIC COMPETITION RULES DOCKET NO. E-00000A-02-0051

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REBUTTAL TESTIMONY OF KEVIN C. HIGGINS

Table of Contents

Introduction	. 1
The question of whether the Affected Utilities have met their obligation to the AISA	
AISA performance of certain transmission-related functions	.4

1		REBUTTAL TESTIMONY OF KEVIN C. HIGGINS
2		
3	Intro	<u>oduction</u>
4	Q.	Please state your name and business address.
5	A.	Kevin C. Higgins, 39 Market Street, Suite 200, Salt Lake City, Utah,
6		84101.
7	Q.	By whom are you employed and in what capacity?
8	A.	I am a Principal in the firm of Energy Strategies, LLC. Energy Strategies
9		is a private consulting firm specializing in economic and policy analysis
10		applicable to energy production, transportation, and consumption.
11	Q.	On whose behalf are you testifying in this proceeding?
12	A.	My testimony is being sponsored by Arizonans for Electric Choice and
13		Competition ("AECC"), a coalition of Arizona business customers in support of
14		retail electric competition.
15	Q.	Have you previously filed direct testimony in this proceeding?
16	A.	Yes, I have.
17	Q.	What is the purpose of your rebuttal testimony?
18	A.	I will be rebutting the direct testimony of AEPCO witness Larry D. Huff.
19	Q.	What aspects of Mr. Huff's testimony are you rebutting?
20	A.	First, I will address Mr. Huff's general policy recommendation that the
21		Commission issue a finding that the Affected Utilities have met their obligations
22		to the Arizona Independent Scheduling Administrator (AISA) pursuant to the

Electric Competition Rules. Next, I will address specific aspects of Mr. Huff's

1		testimony as it relates to the AISA's performance (or non-performance) of certain
2		transmission-related functions.
3	The q	uestion of whether the Affected Utilities have met their obligations to the
4	<u>AISA</u>	
5	Q.	Do you believe that the Affected Utilities have met their obligations to the
6		AISA?
7	A.	To this date, I believe they generally have. But irrespective of whether the
8		Affected Utilities have met their obligations to date, I believe their obligations are
9		continuing, insofar as the AISA continues to have an important function in
10		support of direct access service.
11	Q.	Please comment on Mr. Huff's suggestion that such a finding by the
12		Commission will simultaneously free the Affected Utilities of their obligations
13		to the AISA while allowing the AISA to be "free to fashion its own future as
14		it sees fit."
15	A.	In my opinion, this recommendation is specifically tailored toward
16		AEPCO's particular regulatory status. The AISA pays for its operating expenses
17		by levying a small FERC-approved charge on the scheduling of transmission
18		service for retail delivery in Arizona. This charge was designed to recover costs
19		from both standard offer and direct access customers (through their respective
20		schedulers) on a non-discriminatory basis. This charge is enforceable through
21		FERC on the FERC-jurisdictional utilities, APS and TEP, as well as on
22		competitive retail suppliers scheduling in those territories. My understanding is
23		that AEPCO is not a FERC-iurisdictional utility, and its participation in the AISA

5	Q.	At the AISA's current budget, what is AEPCO's total monthly charge in
4		any competitive providers that may enter the market.
3		AEPCO to drop out of the AISA, leaving the ongoing funding to APS, TEP, and
2		suggestion is that a finding by the Commission of "compliance" would free
ı		is due solely to compliance with state requirements. The implication of Mr. Huff s

support of AISA costs? 6

At the AISA's current budget of \$154,000 per year, the total monthly 7 A. charge to AEPCO is about \$650 per month. 8

Do you agree with Mr. Huff's proposition to allow AEPCO to cease Q. contributing to the AISA?

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A.

No. Although, AEPCO's monthly contribution is a very small cost by utility standards, it is important as a matter of principle that AEPCO participate in the AISA, so that retail customers in its territory can someday benefit from the AISA when shopping for power. Currently, retail customers in AEPCO's territory are precluded from shopping due to the absence of unbundled tariffs among AEPCO's member distribution cooperatives, despite the requirements in the Rules that direct access service is supposed to be available to customers in the cooperatives' distribution territories. The lack of unbundled service in AEPCO's territory is inconsistent with the requirements in the APS, TEP, and SRP territories, and in my opinion, should be rectified. When this barrier to shopping is

¹ The Electric Competition Rules require electric cooperatives to comply with the Rules, although an electric cooperative may request to modify the retail competition implementation schedule. [See R14-2-1601.1, R14-2-1602.A, and R14-2-1604.F.]

removed, the AISA will be in a better position to be of service to retail customers in AEPCO's territory.

AISA performance of certain transmission-related functions

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A.

- 4 Q. Mr. Huff states that the AISA is not needed to implement and oversee 5 operating protocols to ensure fair transmission access. Do you agree?
- No. While Mr. Huff is correct in pointing out that the work of developing A. 6 7 the protocols has been accomplished, his representation that future adjustments to the protocols can be best handled via unilateral OATT filings by the individual 8 9 utilities is precisely the kind of scenario that Arizona has taken great care to avoid. If the role of the stakeholders going forward was eliminated (by 10 eliminating the AISA), it would create a policy vacuum that would severely 11 impair the ability of Arizona stakeholders to jointly develop transmission access 12 solutions that are responsive to changing conditions. Moreover, once the authority 13 over the protocols was abandoned by the AISA and ceded to the individual 14 utilities, as proposed by Mr. Huff, nothing would prevent any of the utilities from 15 16 unilaterally proposing onerous new terms in the protocols and re-filing them at 17 FERC. Stakeholders who objected to the changes would then have to take up the fight in Washington. 18
 - Q. Mr. Huff also states that he does not believe the AISA is needed for dispute resolution. Do you agree?
 - No. Mr. Huff states that the AISA would duplicate the dispute resolution process in each utility's respective OATT. I disagree. The dispute resolution procedures in the utility OATTs were intended to address disputes concerning

wholesale service. The AISA dispute resolution process is intended to address the *retail* service aspects of the AISA protocols. Further, Mr. Huff disparages the AISA dispute resolution process as "non-binding," as its decisions can be appealed to FERC. However, Mr. Huff ignores a key aspect of AISA dispute resolution, which is that it provides a "fast-track" process in which the AISA Director shall make an *immediate* decision to address disputes that concern the implementation of the AISA protocols manual. If the Director's decision is disputed, then the fast-track dispute resolution procedure is required to render a decision by the next business day. Contrary to Mr. Huff's assertions, this decision will stand unless it is overturned later by FERC or a court.² This provision for speedy resolution by a locally-based third party is a distinct advantage of the AISA's dispute resolution process. The fact that parties may still pursue due process through the FERC or courts does not detract from the merit of the AISA's dispute resolution mechanism, as Mr. Huff maintains.

Q. Mr. Huff states that it would be duplicative for the AISA to operate a statewide OASIS. Do you agree?

Yes, and I hasten to add that the AISA Board has refrained from spending any money on developing an AISA statewide OASIS precisely because it would have been duplicative of other efforts underway. In my view, this is an example of the AISA Board making a very responsible decision to stay focused on activities where it could add value – e.g., implementing and overseeing retail access

A.

² AISA Bylaws, Section 6.1.

7	A.	Yes, it does.
6	Q.	Does this conclude your rebuttal testimony?
5		function and operation of the AISA.
4		noted by Mr. Huff, is a positive development that should be complementary to the
3		In this regard, the recently-announced formation of a region-wide OASIS,
2		duplicating efforts to form a statewide OASIS.
1		protocols – and avoiding activities that would have been wasteful, e.g.,

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REBUTTAL TESTIMONY OF MICHAEL D. McELRATH

Table of Contents

	<u>PAGE</u>
The need for AISA now and in the future	1
AEPCO has not fulfilled its responsibilities in relation to the AISA	2
The need for AISA protocols to resolve disputes	3

Rebuttal Testimony of Michael D. McElrath

- Q. Please state your name and business address.
- A. Michael D. McElrath, One North Central Avenue, Phoenix, Arizona 85004
- Q. Are you the same Michael D. McElrath who prefiled direct testimony in this proceeding on July 28, 2003?
- A. Yes.
- Q. What is the purpose of your rebuttal testimony?
- A. I will be responding to parts of the direct testimony of Larry D. Huff, the witness for Arizona Electric Power Cooperative, Inc. ("AEPCO").
- Q. What has been your association with Mr. Huff?
- A. My involvement with Mr. Huff has been in connection with the formation and operation of the Arizona Independent Scheduling Administrator ("AISA"). We both were involved in the initial organization of the AISA, and both presently serve on the AISA Board of Directors.
- Q. In his summary on page 4 Mr. Huff states that "AEPCO and SWTC [Southwest Transmission Cooperative, Inc. ("SWTC") is AEPCO's transmission subsidiary] strongly believe that the AISA is not needed now and will not be necessary in the future to facilitate retail competition". Do you agree with that statement?
- A. No, I do not. The AISA is essential for retail direct access. Conditions are changing to make retail direct access more attractive to customers than at any time in the past. Significant new generation capacity is currently coming on line, the

Competition Transition Charge ("CTC") is about to expire in Arizona Public Service Company's ("APS") territory and rate increases are being sought by at least one of the Affected Utilities, APS. All of these factors will encourage the development of retail electric competition. Until such time as a Regional Transmission Organization ("RTO") is operational and functioning, the AISA is necessary to ensure open, equitable and non discriminatory access to transmission for retail service.

- Q. Also on page 4 of his testimony Mr. Huff recommends ". . . that the Commission simply issue its order that AEPCO has fulfilled its responsibilities under A.A.C. R14-2-1609 in relation to the AISA". Do you agree that AEPCO has fulfilled its responsibilities in relation to the AISA?
- A. No. AEPCO hasn't begun to fulfill its responsibility in relation to the AISA. The member owners of AEPCO have yet to unbundle their tariffs in order to provide customers of those member owners with the opportunity of taking advantage of direct access. Until customers of the member owners have the option of direct access AEPCO will not have fulfilled its responsibility in relation to the AISA.
- Q. On page 5 of Mr. Huff's testimony, he states "AEPCO will not continue its participation in the AISA because participation simply imposes costs on our members and their member owners without providing benefits." Do you agree with that statement?
- A. No. The member owners must first unbundle their tariffs as they are required to do under the provisions of A.A.C. R14-2-1606.C. before the customers of the

member owners will have the opportunity to take advantage of competition and thereby benefit from the AISA.

- Q. On page 7 of his testimony Mr. Huff states that one of the functions of the AISA, the filing of operating protocols, has already been accomplished. He points out that these protocols have been incorporated into APS' and TEP's OATT's and further states that SWTC will incorporate the protocols in its OATT when the member owners' service territories are opened for competition. Do you have any comments concerning those statements?
- A. Yes. First Mr. Huff mentions that the service territories of the member owners are not open to competition. It's when the territories are open to competition that the functions of the AISA will be required. Mr. Huff acknowledges there may need be some adjustments of the protocols ". . . as different or unanticipated circumstances arise." He suggests that those adjustments can be made either directly by the provider or ". . . through some action at the FERC." What Mr. Huff is suggesting is that a federal agency in Washington, D.C. be used to address disputes that may arise concerning the provision of transmission services in Arizona rather than having those disputes addressed locally by utilizing the procedures of AISA. Phelps Dodge's experience with FERC involving the El Paso Natural Gas Company case has indicated that this can be a lengthy, time-consuming and costly process. FERC is just now ruling on a complaint that was filed with FERC in December of 1999. The AISA protocols are intended to provide a process to resolve such disputes on a more timely local basis. In addition, as Mr.

Huff points out in his testimony, the client he is testifying on behalf of, is not even subject to FERC jurisdiction.

- Q. On page 8 of his testimony Mr. Huff supports his argument of a lack of need for AISA by pointing out that only a few hundred customers took competitive services on the APS, TEP and SRP systems throughout the year 2000 and that he was not aware of a single instance when the AISA was called upon to resolve any dispute concerning any of the transactions or other startup issues. Do you have any comment concerning that statement?
- A. Yes. As I pointed out previously, with the increase in generation capacity, the elimination of the CTC and the increase in rates anticipated by the APS rate application filing there undoubtedly will be more customers who will be opting for direct access service. With the increase in customer activity, there will be a much greater need for AISA until such time as an RTO is operational and effectively functioning.
- Q. Does this conclude your rebuttal testimony?
- A. Yes.

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